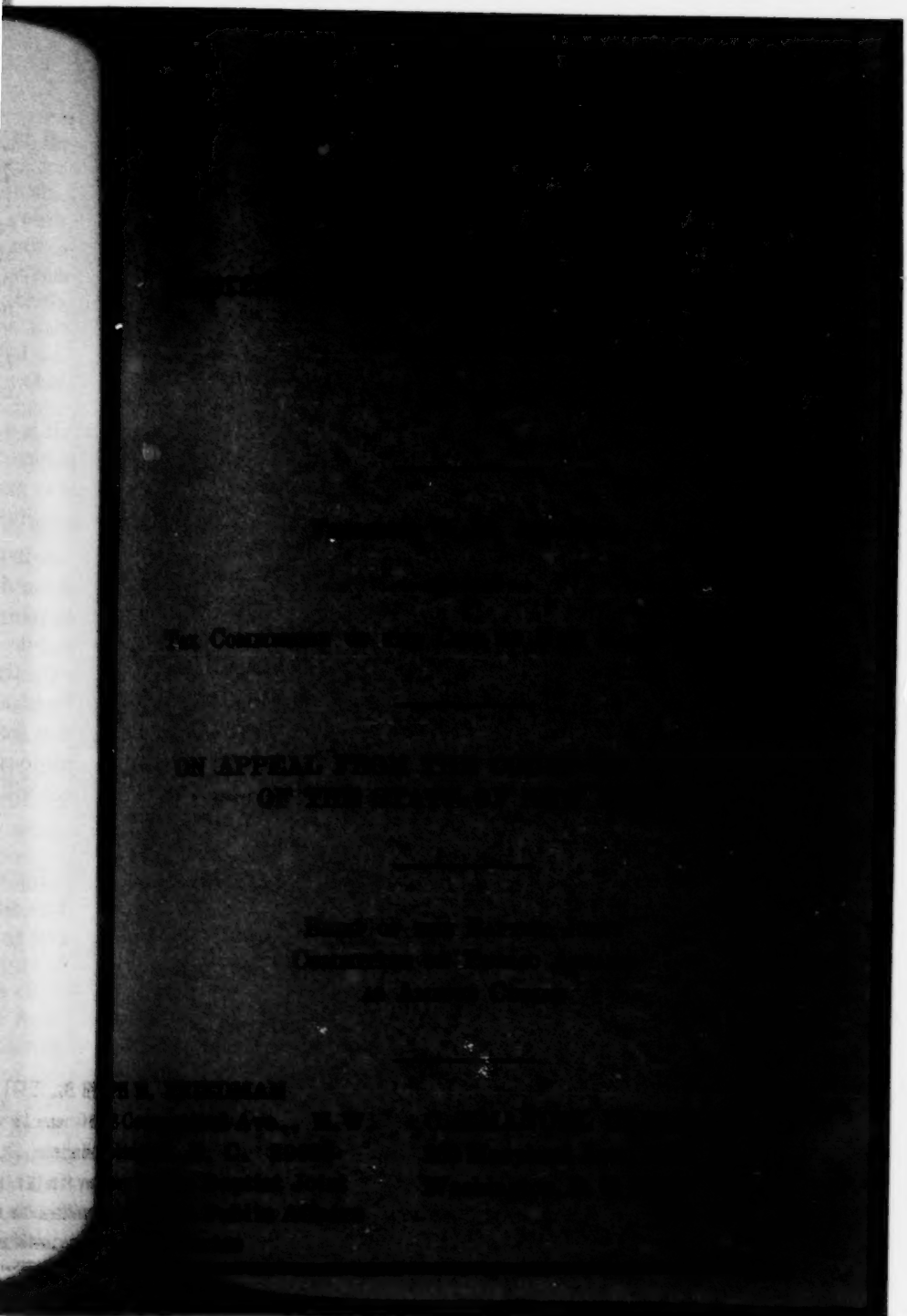

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 135

FREDERICK WALZ, *Appellant*

— against —

TAX COMMISSION OF THE CITY OF NEW YORK, *Appellee.*

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

BRIEF OF THE BAPTIST JOINT
COMMITTEE ON PUBLIC AFFAIRS
AS AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE

The Baptist Joint Committee on Public Affairs is made up of public affairs committees from the American Baptist Convention, The Baptist General Conference, the National Baptist Convention of America, the National Baptist Convention, U.S.A., Inc., the North American Baptist General Conference, the Seventh Day Baptist General Conference, and the Southern Baptist Convention. These Baptist groups have some 23 million members who evidence a di-

rect interest in church-state relations. The Joint Committee has as one of its mandates to act "whenever Baptist principles are involved, or jeopardized through governmental action. . . ." Among Baptists religious liberty is a fundamental religious principle. That principle is also an important constitutional principle of American government. In the opinion of the Baptist Joint Committee that principle is jeopardized by appellant's case.

STATUTES INVOLVED

Article 16, Sec. 1 of the New York State Constitution and Sec. 420 sub. 1 of the Real Property Tax Law of New York provide for real property tax exemption for property used exclusively for religious purposes.

QUESTION PRESENTED

In general the question is presented: Did the Court of Appeals of the State of New York err in holding that the real property tax exemption on property used for religious purposes is not in violation of the First and Fourteenth Amendments of the federal Constitution? More specifically the question may be stated: Does the federal Constitution *prohibit* states from exempting from taxation real property owned by religious organizations in the form of associations and corporations and used for religious purposes?

STATEMENT OF THE CASE

Frederick Walz, a citizen of the United States of America, states that he is a Christian though not a member of any religious organization. By that statement he sets up his definition of the nature of religious commitment and experience. It is a definition which takes cognizance of the

individual dimensions but excludes the group dimensions of religious experience.

He is an owner in fee simple of real property located in the County of Richmond of New York City, New York. His complaint is that exemption from taxation of real property of religious organizations in the form of associations or corporations and used by them for religious purposes forces him to pay higher taxes than he would for the same public services if those religious properties were taxed. This, he claims, "constitutes an involuntary payment by plaintiff to the aforementioned religious organizations, in violation of plaintiff's right of religious freedom" and confiscates his property "without due process of law, in violation of the provisions of the Constitution of the United States of America." Thus his understanding of religious freedom does not include provision for free churches or other religious groups. While most churches are incorporated, to view religious organizations merely as corporations is to distort the true meaning of those organizations.

The New York Tax Commission replied that tax exemption of real properties of religious organizations was provided for in law and that the appellant was neither aggrieved by this policy nor denied rights sufficient to state a cause of action.

ARGUMENT

(1) The exemption from taxation by state and local government of real property owned by religious organizations and used for religious purposes is not prohibited by the federal Constitution.

(2) Constitutionally guaranteed religious liberty presupposes the free conscience and the free church. This re-

quires, by right, the freedom from taxation of property used for religious purposes.

(3) The federal Constitution in the First Amendment forbids Congress from "an establishment" of religion. This denial of power was made applicable to the states by the Fourteenth Amendment. Therefore, neither federal nor state governmental agencies can operate churches, and if such governmental agencies attempt to turn churches into a source of revenue for state purposes those attempts constitute restraints on the free exercise of religion.

Constitutional scholars have held almost unanimously that the meaning of the establishment clause referred simply to an act which established a religion or a sect as the "official" state religion or denomination. James Madison, who authored the First Amendment, was quoted by this Court (*Engel* v. *Vitale* 370 U.S. 421), "It is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever."

"An establishment" had a specific meaning to Madison and those who demanded the adoption of the Bill of Rights in return for the ratification of the new Constiution. It had nothing to do with tax exemption of church property—a practice which existed before the First and Fourteenth Amendments and has existed continuously to the present.

A question raised in this case is whether the Constitu-

tion *permits* state and local governments to grant tax exemptions to religious organizations for real property used for religious purposes as a reasonable exercise of the police power of the state to promote the general welfare. We hold that such tax exemption is permitted by the Constitution and that this cannot be construed as "an establishment" in the historical meaning of the term.

Further we hold that the First Amendment guarantee of religious liberty *requires* that real property owned by religious organizations and used in the main for religious purposes be exempt from taxation.

In keeping with this we would emphasize that the word "religion" and, hence, "religious" is not capable of any one completely objective definition. To establish such tests as the sacerdotal content of the functions of an organization is to miss this point by adopting one definition. Religion is both subjective and experiential. The genius of religious liberty lies in its acceptance of pluralism. Thus an attempt at a particular definition could be considered an establishment *per se*.

We acknowledge a validity in the argument of *quid pro quo* between governmental agencies and church agencies which has been used so often by American courts to justify tax exemptions. Such an argument, however, is most applicable in the area of public services performed by the churches and should not be applied to the strictly religious functions of religious organizations. If the idea of a *quid pro quo* is used with reference to worship or religious education it tends toward a contractual relationship which invites terms and conditions which can readily be misunderstood and misused by church and state alike. Tax exemption of real property of religious organizations most appropriately rests on the principle of religious liberty.

We further assert that the burdens on the individual taxpayer brought about by the tax exemption of real property of religious organizations which is used for religious purposes is, in this case as in other specific situations, so unsubstantial that it is not sufficient cause for action. We have heard and read of "research" which claims to indicate a vast wealth on the part of religious organizations, but we have not found well validated factual reports. The real property used for religious purposes, however, is only a small and indeterminate part of that estimated wealth. Many churches have affirmed the propriety of paying for the public services rendered to their property. We hold that where the value of services rendered by government is ascertainable churches should pay for those services. We do not concede that they can be taxed directly or indirectly through forced payments for public purposes. Nonetheless, the question is not one of the ability to pay but rather it is the right of religious freedom which is attached to real property used for religious purposes.

We also assert that there is a grave and probable threat to freedoms in general when inroads are made on the First Amendment freedoms. We recognize that these freedoms are not absolutes but we consider religious liberty so fundamental that we view with alarm any action which might infringe upon it. Religious liberty requires the degree of separation of church and state afforded by the tax exemption of real property that is used for religious purposes.

Our understanding of the dignity of man requires a free exercise of religion that includes the free conscience and the free church. These are not incongruous nor incompatible but are, rather, vitally interdependent. It is possible to emphasize the individual's freedom from coerced religious participation to the point of an absolute that threatens the

freedom of religious assembly for those who have such convictions. We feel that appellant made this overemphasis. We stress that the institutions of religion are not the end in view, and we do not plead institutional hardships as valid reasons for tax exemptions by the state. However, we do hold that the fulfillment of man's religious potentials, both personal and corporate, should be excluded, and, according to the Constitution, must be excluded, from the taxing competence of the state.

CONCLUSION

The decision of the Court of Appeals of the State of New York should be affirmed.

Respectfully submitted,

C. EMANUEL CARLSON
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October 15, 1969

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APPENDIX

BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

October 7, 1969

A STATEMENT OF POLICY ON THE TAXATION OF CHURCH PROPERTY*

In the United States it has been a tradition that church property is exempt from the payment of most state and federal taxes almost without reference to its nature. Seldom has real property of churches used for religious purposes been taxed. In addition, churches and their employees in doing the work of churches have been exempt from most sales, use, and excise taxes. Churches do not pay taxes on their income. Gifts and donations to churches are given a special tax status as nonprofit organizations. Investments by churches have a privileged position.

Entire denominations and individual churches generally have accepted these exemptions without examining either the legal or the ethical reasons behind them or without attempting to establish a rationale which distinguishes between legitimate and non-legitimate tax exemptions for the future as well as the present.

Realizing the necessity for clear rationale, the Baptist Joint Committee on Public Affairs on October 7, 1969 approved the following statement:

Any claim which churches may make for exemption from

*As used in this document the word "churches" comprehends all places of worship, i.e., synagogues, Buddhist temples, etc.

the payment of taxes or for special tax status must be based on either (1) the concept of religious liberty, or (2) the concepts of equality or equity.

Religious liberty:

1. Religious liberty is guaranteed by the First and Fourteenth Amendments of the Constitution. That freedom may be limited by government only when there is overwhelming evidence that a failure to limit would result in serious danger to the health, safety, morals, or general welfare of the people of a state or the entire nation.

2. Religious liberty is a vital part of the legal heritage of this nation. It is also an equally vital part of the personal, emotional, and intellectual life of the citizens of this nation.

3. The ability of government to tax certain church property, such as that used for religious purposes, could at least hinder or prosper particular religious movements or manifestations. Religious liberty requires that there be few hindrances on churches as they attempt to achieve the purposes for which they have been organized and that whatever limits are imposed must be in the spirit of the First and Fourteenth Amendments. Religious liberty does not demand, however, the tax exemption of all church property and activity.

4. Among historically practiced exemptions difficult to justify on the basis of religious liberty, though some may be justified on the basis of equality and equity, are the following:

a. engaging in business projects unrelated to religious concerns, with income tax and property tax exemptions, in competition with private enterprise

b. ownership of real property which produces income but which is not taxed for local governmental services

c. claiming of tax exemption for property which is used for personal residence

d. long-term holding of real property on a tax exempt basis for capital gains.

5. Where the value of services rendered by government to a property is ascertainable churches should make payment for those services.

*Equality and equity:**

1. Churches, in operating such publicly standardized services as schools, children's homes, hospitals, pension boards, etc., should be given equality in tax privileges with other nonprofit organizations rendering the same social services to the community.

2. The freedom of churches to be active in social ministries without being handicapped by tax burdens that are not applicable to comparable public or other private nonprofit agencies is an important principle of equality.

3. In the event that complete equality is unfair, churches should seek to achieve equitable treatment.

4. Exemption from taxation on the basis of services rendered requires a commitment to the common good rather than to a selective religious ministry or to a program of religious recruiting.

The dignity of man requires a free exercise of religion that includes the free conscience and the free church. These are not incongruous nor incompatible, but are, rather,

*Equality usually refers to sameness and equity denotes fairness or substantial justice.

vitally interdependent. The fulfillment of man's religious potentials, both personal and corporate, should be excluded from the taxing competence of the state.

Where religious compassion for fellowmen is genuine, it is not sectarian nor biased on such social categories as race, national origins, or group affiliations. Service to others should not be taxed simply because it is rendered by religious agencies.